

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1418 (Delegate Lafferty)
Environmental Matters and Economic Matters

Environment - At-Store Recycling - Plastic Carryout Bags

This bill requires “store” operators to establish specified at-store recycling programs that provide an opportunity for customers to return clean plastic carryout bags to the stores. Manufacturers of plastic carryout bags must develop educational materials to encourage the reuse, recycling, and reduction of plastic carryout bags and must make those materials available to stores. The bill limits the authority of local governments to adopt specified ordinances, resolutions, regulations, or rules relating to plastic carryout bags. The Maryland Department of the Environment (MDE) must adopt implementing regulations, but is authorized to delegate the implementation and enforcement of the bill to a local government. Finally, the bill establishes civil penalty provisions.

Fiscal Summary

State Effect: Special/general fund expenditures increase by about \$278,300 in FY 2011 for MDE to implement and enforce the at-store recycling program. Out-year expenditures reflect only the personnel and operating costs necessary to enforce the program. General fund revenues may increase minimally from the collection of penalties established by the bill.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF/SF Exp.	\$278,300	\$187,900	\$195,700	\$203,800	\$212,300
Net Effect	(\$278,300)	(\$187,900)	(\$195,700)	(\$203,800)	(\$212,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not anticipated to materially affect local government finances assuming that the bill is enforced by MDE at the State level. Expenditures increase to the extent MDE delegates enforcement to local governments; however, MDE is not expected to do so.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An at-store recycling program must include the following requirements:

- plastic carryout bags provided by the store must have printed or displayed on the bag a specified phrase encouraging customers to return the bags to a participating store for recycling;
- a plastic carryout bag collection bin must be (1) placed at each store; (2) visible and easily accessible; and (3) marked in a specified manner;
- the store must maintain records for at least three years regarding the collection, transport, and recycling of plastic carryout bags and must make those records available to MDE or a local jurisdiction on request; and
- the store operator must make reusable bags available for purchase by customers.

“Store” means a retail establishment that provides plastic carryout bags to its customers and has over 7,000 square feet of retail space. An “operator” is a person in control of, or having daily responsibility for, the daily operation of a store and may include the store owner. A “plastic carryout bag” is a plastic carryout bag provided by a store to a customer at the point of sale. A “reusable bag” means a bag made of cloth or any other machine-washable fabric that has handles or a durable plastic bag with handles that is at least 2.25 millimeters thick and is specifically designed and manufactured for reuse.

Local jurisdictions are prohibited from adopting ordinances, resolutions, regulations, or rules that (1) require compliant stores to collect, transport, or recycle plastic carryout bags; (2) impose a ban on the use of plastic carryout bags by a store; and (3) require additional auditing or reporting requirements. However, the bill does not prohibit local jurisdictions from adopting, implementing, or enforcing local ordinances, resolutions, regulations, or rules governing specified curbside or drop-off recycling programs.

A person who violates any of the bill’s provisions is liable to the State for a civil penalty not exceeding (1) \$500 for a first violation; (2) \$1,000 for a second violation; and (3) \$2,000 for a third or subsequent violation. The State must recover civil penalties in a civil action in any county.

Current Law: MDE promotes and encourages waste diversion across the State. Waste diversion combines both recycling and source reduction activities. The Maryland Recycling Act requires all counties and Baltimore City to recycle 15% or 20% of their

waste generated depending on population. Additionally, in 2000, Maryland established a voluntary statewide waste diversion goal of 40% by 2005. The waste diversion goal comprises the recycling rate plus source reduction credits (maximum 5%) that Maryland counties and Baltimore City earn through activities designed to reduce the amount of waste going to the waste stream. Counties have flexibility to determine the best way to reach the required recycling rates. State law does not specifically address the disposal or recycling of plastic carryout bags.

Background: Americans use an estimated 50 to 80 billion plastic bags annually and the use of disposable carryout bags has been the center of much media attention. Due to concerns about the environmental impacts of plastic and paper bags, there is growing interest in banning their use. Proponents of such bans argue that the production of paper bags consumes a significant number of trees and that plastic bags clog waterways, harm wildlife, and consume valuable landfill space.

Several jurisdictions around the world have already taken action on this issue. Bangladesh, France, Uganda, and several other countries have approved nationwide bans on the use of plastic bags. Germany, Ireland, Denmark, Sweden, and Switzerland, among others, have a tax or levy on plastic bags in an effort to discourage their use. Still others, such as Holland and Canada, have focused on recycling efforts. Others are also considering the implementation of bans or taxes in order to reduce plastic bag consumption.

In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies. Similar legislation is being debated in several other U.S. cities. In fact, the City of Annapolis considered, but did not enact, legislation to ban retailers from distributing plastic shopping bags in the city. Instead, retailers would have been required to offer bags made of recycled paper and to sell reusable bags. During its 2009 legislative session, the Virginia General Assembly considered, but did not adopt, bills banning single-use bags and charging fees for use of disposable plastic and paper bags. In April 2009, a bill (H.R. 2091) was introduced in the U.S. House of Representatives that imposes a retail tax on single-use carryout bags.

On January 1, 2010, a new law took effect in the District of Columbia banning the use of disposable, nonrecyclable plastic carryout bags and requiring specified stores to charge a fee of 5 cents for each disposable bag a shopper is given. The bag fee revenue must be used to clean and protect the Anacostia River and other impaired waterways.

Due to concerns associated with both plastic and paper bags, reusable bags (such as canvas bags) are gaining popularity, despite their additional cost.

State Expenditures: Special/general fund expenditures increase by \$278,325 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring a contractual natural resource planner for half a year to draft regulations and oversee the creation of the program, and four contractual environmental compliance specialists to enforce the bill statewide, including the purchase of four vehicles for inspection and enforcement. The information and assumptions used in calculating the estimate are stated below:

- MDE enforces the bill and does not delegate enforcement to local governments; and
- an estimated 10,000 stores are subject to the bill's requirements.

	<u>FY 2011</u>	<u>FY 2012</u>
New Contractual Positions	4.5	
Salaries and Fringe Benefits	\$157,606	\$174,265
Start-up Costs and Operating Expenses	<u>120,719</u>	<u>13,635</u>
Total State Expenditures	\$278,325	\$187,900

Currently, the Office of Recycling is staffed by four full-time personnel and overseen by one supervisor. The fiscal 2009 ending balance for the State Recycling Trust Fund was \$449,878, and it is unclear whether this fund can handle the additional expenditures to implement the bill in fiscal 2011. Thus, general fund expenditures may increase to the extent that sufficient State Recycling Trust Fund money is not available.

Future year expenditures reflect full salaries with 4.4% annual increases, 6.8% employee turnover, and 1% annual increases in ongoing operating expenses.

If compliance with the at-store plastic bag recycling program becomes widespread, potentially all of the contractual inspectors may no longer be needed and thus could be eliminated at some point. However, this estimate assumes that all four inspectors will be needed at least through fiscal 2015 to ensure that the several thousand affected stores are in compliance with the bill.

Legislative Services advises that actual MDE expenditures in all years may be significantly less to the extent that MDE delegates enforcement to local governments. In addition, to the extent that the actual number of affected stores differs significantly from the anticipated level, the number of MDE personnel needed to enforce the bill will also vary.

Small Business Effect: Small business owners of stores that are 7,000 square feet in area or greater may be meaningfully impacted by the bill to implement an at-store recycling program. The bill specifies that the at-store recycling program must include the provision of plastic carryout bags designed with specified printing as well as collection bins and reusable bags for purchase by customers. Additionally, each affected store must maintain records of the program for inspection. The additional cost to comply with these requirements is unknown, but may be meaningful for at least some small businesses. The number of small businesses affected by the bill is unknown, but could be an estimated 2,500.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; Maryland Department of the Environment; *The New York Times*; *The Washington Post*; Department of Legislative Services

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